

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**MAJOR LAKESHORE VARIANCE (#FLV-16-02)**  
**JACK PALMER**  
**MAY 13, 2016**

A report regarding a request by Doepker Landscape on behalf of Jack Palmer for a minor variance to the Flathead County Lake and Lakeshore Protection Regulations (FCLR) to allow for 66 cubic yards of clean washed fill material to be placed lakeward of rip rap. The proposed variance is located lakeward of the mean annual high water mark within the Lake and Lakeshore Protection Zone (LPZ) on Flathead Lake.

**I. APPLICATION REVIEW UPDATES**

**A. Commission**

This space is reserved for an update regarding the Flathead County Board of Commissioners' review of the proposed lakeshore construction variance.

**B. Planning Board**

This space is reserved for an update regarding the June 8, 2016 Flathead County Planning Board review of the proposed major lakeshore variance.

**C. Commission**

The Flathead County Board of Commissioners' reviewed the minor lakeshore variance FLV-16-02 on April 14, 2016. It was determined the application constituted a major lakeshore variance and the board voted 3-0 to put the application before the Flathead County Planning Board for their review and recommendation.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Landowner**

Jack Palmer  
P O Box 376  
Lakeside, MT 59922

**ii. Applicant/Contractor**

Jim Doepker  
Doepker Landscape  
605 Capistrano Drive  
Kalispell, MT 59901

- B. Property Location and Lakeshore Frontage** The subject property is located at 679 Conrad Point Road (Figure 1). The subject property has 295 lineal feet of shoreline and can legally be described as Tract 3ACB in Lot 1 in Section 20, Township 26 North, Range 20 West, P.M.M., Flathead County, Montana.

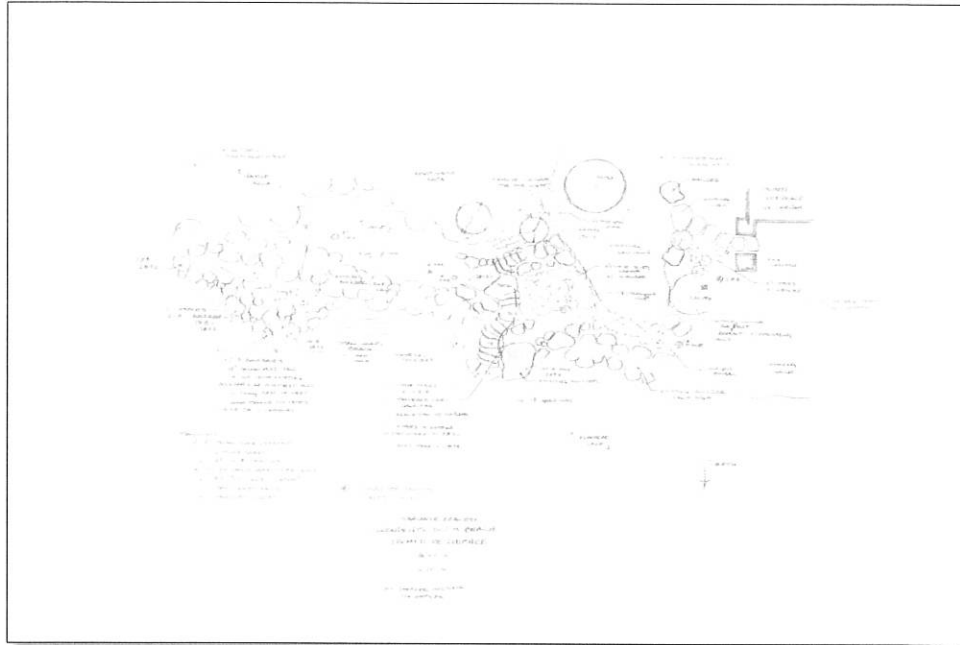
**Figure 1:** Subject property (outlined in red)



### **C. Summary of Request**

The applicant is proposing to install 32 feet of rip rap in the shape of a shallow question mark with 14 feet being the furthest point from the existing rip rap along the shoreline within the LPZ. Currently there is no development in the LPZ on the property. The proposed project would consist of placing approximately 54 cubic yards/6 truckloads of 2 to 3 feet diameter blast rock boulders in a 32 foot long east to west curve along the shoreline and 14 feet from the shoreline at the farthest point of the curve. The boulders would be 12 inches below the high water mark at full pool. In the area immediately landward of the curve, 12 yards of 6 inch cobbles will be used. The applicant is requesting a variance for the volume and depth of the fill. The variance application is for a Minor Variance to Section 4.3(F)(2)(h)(5) and Section 4.3(F)(2)(h)(6) of the FCLR to allow the fill to exceed four to six inches in depth and to exceed the approximately 18.5 cubic yards total allotted amount of fill allowed for the shoreline frontage. The applicant has stated the amount of fill proposed in the variance request is necessary to reduce 'wave energy to allow fine gravels to collect on the lake floor naturally, thereby creating a swim beach...Granting this variance will help reduce the amount of gravel that the neighbor to the east must remove off his lakeshore each winter. This will help reduce continuing lakeshore maintenance.'

**Figure 2:** Site plan demonstrating project.



Therefore, the applicants are requesting a minor variance from the Flathead County Lake and Lakeshore Protection Regulations, to allow for 66 cubic yards of clean washed fill material to be placed lakeward of rip rap in the LPZ, and for the placement of a stone walkway and stairs in the LPZ which does not require a variance.

- Variance #1 - A variance is being requested to place fill within the LPZ at a depth of approximately 4 feet or less.
- Variance #2 - A variance is being requested to bring in 66 cubic yards of fill to create a curved spit with 32 feet of rip rap in a curved spit with 12 cubic yards in the curve of the spit.

**D. Agency Referrals**

Agency referrals were sent to the following agencies on April 25, 2016, requesting comments on this request.

- Montana Department of Environmental Quality
- Montana Fish, Wildlife and Parks
- U.S. Fish and Wildlife
- U.S. Army Corps of Engineers
- DNRC Kalispell Water Resources Regional Office

**E. Section of the Regulations the Variance Request Applies to:**

With this Minor Variance, the applicant is requesting a variance to the following section of the Flathead County Lake & Lakeshore Protection Regulations:

- 1) Section 4.3(F)(2)(h)(5)- *Addition of rock to the lakebed and lakeshore protection zone is permissible activity but shall be reviewed on a case-by-case basis subject to the following requirements: Maximum fill depth is four to six inches.*

- 2) Section 4.3(F)(2)(h)(6)- *Addition of rock to the lakebed and lakeshore protection zone is permissible activity but shall be reviewed on a case-by-case basis subject to the following requirements: The volume of fill shall not exceed one cubic yard per sixteen lineal feet of lake frontage.*

### III. COMMENTS RECEIVED

#### A. Public Comments

To date, the Flathead County Planning and Zoning Department has received no comments regarding this request from the public. It is anticipated anyone who wishes to speak either in favor or against the application will do so at the public hearing.

#### B. Agency Comments

The following is a summary of agency comment received to date.

- DNRC: “The project is located within the Approximate Zone A Floodplain of Flathead Lake. If the variance is approved, a floodplain development permit is required prior to construction. In the floodplain development permit application the Applicant needs to explain how rock sizes are determined. If rock sizes are based upon calculations to resist wave erosion then a PE must provide the calculations. If rock size is based upon existing rock structures that can be shown to resist wave erosion, the Applicant should provide photographic evidence, with a reference scale, of the rock size being use for existing structures. Since this project is located in an approximate Zone A area of a lake there is no floodway. The Applicant does not need to provide engineer certification for no-rise, that the project will affect upstream or downstream landowners, or that the project can withstand hydrostatic or hydrodynamic force from a 1% flood event.” Email received May 2, 2016.

### IV. EVALUATION OF REQUEST

The criteria set forth in the Flathead County Lake & Lakeshore Protection Regulations Section 5.1(A) regarding Minor Variances were used to determine findings of fact and to evaluate the variance request as outlined below:

#### A. Due to unusual circumstances a strict enforcement of such requirements and standards would result in undue hardship.

As the application states ‘The applicant does not have a dock. The lakeshore is very rocky and the wave action moves all the fine gravel to the east.’ The applicant prefers to maintain the natural appearance of the property. Although the alternative exists of installing a dock which is a permit administratively granted, they wish to keep the natural appearance of the shoreline and utilize construction which will naturally achieve a small swim beach. The same effect occurs with the installation of a dock however the applicant does not desire the wave action around the end of the dock to cause potential damage with erosion of the existing shoreline. They do not need or want a dock on the property and prefer a natural solution to the creation of a swim beach and the potential result of lessening their neighbor’s lakeshore maintenance with redistributing accumulated gravel from their existing docks.

**Finding #1:** Although an alternative exists to the natural creation of a swim beach on the applicant’s property, the applicant prefers the more natural approach of the spit for the formation of the swim beach.



**No reasonable alternatives exist which do meet the standards herein.**

The applicant states, "Yes. If we installed a dock, the same effect would occur. The reduction in wave energy would create a natural accumulation of finer lake gravel. The owner would rather not build a dock."

**Finding #2:** It would appear there is a reasonable alternative of installing a dock which does meet the standards herein.

**B. Granting of the variance will not have adverse impacts on the lake or lakeshore in terms of the Section 4.1 "Policy Criteria for Issuance of a Permit".**

The proposed action shall not, during either its construction or its utilization:

**i. Materially diminish water quality.**

The application states, "No. The material will all be angular rip rap, no silts or fines will be exposed on the lakeshore. The fine gravels will be moved into place naturally by wave action." The proposed fill is clean 2 feet to 3 feet in diameter boulders with 3 inch to 6 inch rock contained by the boulder curve to prevent it from washing out into Flathead Lake. Furthermore, the fill and boulders would help protect the shoreline from erosion preventing siltation and sedimentation into the waters of Flathead Lake.

**Finding #3:** The proposal would not appear to materially diminish water quality because the proposed fill is clean 2 feet to 3 feet in diameter boulders with 3 inch to 6 inch rock contained by the boulder curve preventing the fill from washing out into Flathead Lake and the proposed variance would prevent erosion of the subject property reducing siltation and sedimentation into the lake.

**ii. Materially diminish habitat for fish or wildlife.**

The applicant states, "No. The spit and associated beach area will improve habitat for fish." The proposed curved spit created by the fill, will be created lakeward of the shore on the existing gravel bed so the variance would not appear to be destroying native vegetal habitat. The variance for the placement of fill at a depth and quantity exceeding that allowed by the FCLR would not appear to diminish habitat for fish because the fill is proposed landward of the mean annual high water line and the placement of the fill will not limit or hinder movement of wildlife as wildlife would be able to freely traverse on existing shore.

**Finding #4:** The proposal will not materially diminish habitat for fish or wildlife because the proposed fill would be placed in a location lakeward, under the mean annual high water line on an existing gravel bed on the property and would not hinder or restrict wildlife movement.

**iii. Interfere with navigation or other lawful recreation.**

As indicated in the application, "No. Not at all." The proposed fill will be entirely lakeward of the mean annual high water mark with a maximum distance from shore of 14 feet. Given the distance and the existing topography of the lakeshore, the distance of 14 feet will not interfere with navigation or existing recreation. As stated in the application the project is located on private property, allowing the proposed fill would increase lawful recreation potential

on the property by allowing the property owner to utilize his lake frontage more easily with the creation of a small, naturally occurring gravel beach.

**iv. Create a public nuisance.**

The application states, “No. Not at all.” The variance should not create a public nuisance because the proposed fill would take place lakeward under the mean annual high water mark on private property. The proposed variance is to increase the depth and amount of fill being placed at the property within the LPZ, the addition of fill at smaller quantities and in lesser depths would be allowed as a standard permitted activity.

**Finding #5:** The variance would not appear to interfere with navigation, lawful recreation or create a public nuisance because the proposed variance would take place lakeward of a distance of no more than 14 feet of and under the mean annual high water elevation on private property, the variance would improve access to the owners shoreline and the fill would be a permitted activity in smaller quantities and lesser depths.

**v. Create a visual impact discordant with natural scenic values, as determined by the governing body, where such values form the predominant landscape elements.**

The application states, “No, it will fit in perfectly with the lakeshore. It will look like a natural element.” The applicant will utilize natural, local rock for both the boulders and proposed fill the variance request is for. The resulting spit will blend in with the existing shoreline consisting of several naturally occurring boulders and rock outcroppings.

**vi. Alter the characteristic of the shoreline.**

The applicant states, “Yes, it will create a wave buffer. The loss of wave energy will allow the deposition of fine, natural, existing lakeshore gravel thereby creating a small beach.” The applicant has stated natural rocks will be used and the height of the spit of 4 feet will be under the high waterline. The resulting accumulation of gravel naturally occurs on neighboring properties which have docks. The shoreline and lakebed on the property already have naturally occurring large boulders and rock outcroppings. Additionally fill is a standard permitted activity within the FCLR; however, the variance is to increase the amount and depth of the fill for the property beyond that permitted in the FCLR.

**Finding #6:** Granting of the proposed variance would not appear to create a visual impact discordant with natural scenic values or alter the characteristic of the shoreline because the proposed variance will utilize natural, local rock, the project will be under the high water mark, gravel will accumulate similarly to existing docks in the area, the shoreline and lakebed have naturally occurring large boulders and rock outcroppings and additionally, the proposed fill with a lesser volume and depth is a standard permitted activity within the FCLR.

**SUMMARY OF FINDINGS**

1. Although an alternative exists to the natural creation of a swim beach on the applicant’s property, the applicant prefers the more natural approach of the spit

for the formation of the swim beach. It would appear there is a reasonable alternative of installing a dock which does meet the standards herein.

2. The proposal would not appear to materially diminish water quality because the proposed fill is clean 2 feet to 3 feet in diameter boulders with 3 inch to 6 inch rock contained by the boulder curve preventing the fill from washing out into Flathead Lake and the proposed variance would prevent erosion of the subject property reducing siltation and sedimentation into the lake.
3. The proposal will not materially diminish habitat for fish or wildlife because the proposed fill would be placed in a location lakeward, under the mean annual high water line on an existing gravel bed on the property and would not hinder or restrict wildlife movement.
4. The variance would not appear to interfere with navigation, lawful recreation or create a public nuisance because the proposed variance would take place lakeward of a distance of no more than 14 feet of the mean annual high water elevation on private property, the variance would improve access to the owners shoreline and dock and the fill would be a permitted activity in smaller quantities and lesser depths.
5. Granting of the proposed variance would not appear to create a visual impact discordant with natural scenic values or alter the characteristic of the shoreline because the proposed variance will utilize natural, local rock, the project will be under the high water mark, gravel will accumulate similarly to existing docks in the area, the shoreline and lakebed have naturally occurring large boulders and rock outcroppings and additionally, the proposed fill with a lesser volume and depth is a standard permitted activity within the FCLR.

## **CONCLUSION**

Per Section 5.1 of the Flathead County Lake and Lakeshore Protection Regulations a review and evaluation by staff comparing the proposed variance to allow for 66 cubic yards of clean washed fill material to be placed lakeward of rip rap for a major variance request has found the proposal to generally comply with the review criteria, based upon the draft Findings of Fact presented above.

## **V. CONDITIONS OF APPROVAL:**

### **A. Standard Conditions of Approval:**

1. No other activities are permitted within the Lakeshore Protection Zone other than those listed and/or conditioned by this permit.
2. Mechanized vehicles shall be allowed on the lakeshore only in connection with this project. Should any vehicle slice, gouge, or rut the beach, become stuck or expose clay, silts, and fine sands, said vehicle shall be immediately removed from the Lakeshore Protection Zone and an alternative procedure shall follow [Section 4.2(D)(2)(e)].
3. No vehicle shall come in contact with the lake water.
4. All construction debris shall be disposed of outside the Lake and Lakeshore Protection Zone in such a manner and in such a location so as to prohibit its reentry into the lake, per Section 4.2(F)(2).

5. Temporary stockpiling of materials is prohibited in the Lakeshore Protection Zone [Section 4.2(C)(2)(b)].
6. All wood used in the Lakeshore Protection Zone, or in the construction of over-water structures, shall be untreated and left in its natural state. No preservatives including varnish, stain, paint, linseed oil, diesel fuel, creosote or any other surface or pressure treated preservatives are allowed [Section 4.2(B)(2)(a)(1)].
7. This permit must follow the dimensions and project description as submitted, unless amended by the Flathead County Lake and Lakeshore Protection Regulations.
8. The proposed activity shall not, during either its construction or utilization, alter the existing grade of the shoreline.

**B. Project Specific Conditions of Approval:**

*Fill or Swim Beach Creation:*

9. Fill projects for the purpose of expanding existing land areas shall not be permitted [Section 4.3(F)(2)(e)].
10. Discharge of fill material directly into the lake shall not be permitted [Section 4.3(F)(2)(f)].
11. Filling is only permitted at low pool.
12. Filling of wetlands adjacent to a lake is prohibited [Section 4.3(F)(2)(g)].
13. Application of rock is not permitted in the following areas: wetlands and sites subject to strong wave action or currents; sites covered predominately by vegetation; or below average low water [Section 4.3(F)(2)(h)(2)].
14. All fill shall be clean, washed rock with a minimum diameter of ¾ inch and free of silts, sands and fines [Section 4.3(F)(2)(h)(4)].
15. Rock type, size and color shall approximate that existing on the adjacent lakeshore [Section 4.3(F)(2)(h)(4)].
16. The maximum fill depth is four (4) feet.
17. The volume of fill shall not exceed seventy-five (75) cubic yards
18. Permits for any filling may also be required by the Department of State Lands and U.S. Army Corps of Engineers [Section 4.3(F)(2)(i)].